

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Docket No. DOT-OST-2010-0076

Notice of Funding Availability for the Department of Transportation's National Infrastructure Investments under the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act for 2010

AGENCY: Office of the Secretary of Transportation, DOT

ACTION: Notice of Funding Availability

SUMMARY: This notice announces the availability of funding and requests proposals for the Department of Transportation's National Infrastructure Investments. In addition, this notice announces selection criteria and pre-application and application requirements for the National Infrastructure Investments.

On December 16, 2009, the President signed the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act for 2010 (Div. A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117, Dec. 16, 2009)) ("FY 2010 Appropriations Act"). The FY 2010 Appropriations Act appropriated \$600 million to be awarded by the Department of Transportation ("DOT") for National Infrastructure Investments. This appropriation is similar, but not identical to the appropriation for the Transportation Investment Generating Economic Recovery, or "TIGER Discretionary Grant", program authorized and implemented pursuant to the American Recovery and Reinvestment Act of 2009 (the "Recovery Act"). Because of the similarity in program structure, DOT is referring to the grants for National Infrastructure Investments under the FY 2010 Appropriations Act as "TIGER II Discretionary Grants". As with the TIGER

program, funds for the TIGER II program are to be awarded on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area or a region. Through this notice, DOT is soliciting applications for TIGER II Discretionary Grants. On April 26, 2010, DOT published an interim notice announcing the availability of funding for TIGER II Discretionary Grants. Because this is a new program, the interim notice also requested comments on the proposed selection criteria and guidance for awarding TIGER II Discretionary Grants. DOT considered the comments that were submitted in accordance with the interim notice and decided to publish this notice revising some elements of the interim notice. Each of the substantive revisions made in this notice are described below in "Supplemental Information." In the event that this solicitation does not result in the award and obligation of all available funds, DOT may decide to publish an additional solicitation.

DATES: Pre-applications must be submitted by July 16, 2010, at 5:00 p.m. EDT (the "Pre-Application Deadline"). Final applications must be submitted through Grants.gov by August 23, 2010, at 5:00 p.m. EDT (the "Application Deadline"). The DOT pre-application system will open no later than June 23, 2010 to allow prospective applicants to submit pre-applications. Subsequently, the Grants.gov "Apply" function will open on July 30, 2010, allowing applicants to submit applications. While applicants are encouraged to submit pre-applications in advance of the Pre-Application Deadline, pre-applications will not be reviewed until after the Pre-Application Deadline. Similarly, while applicants are encouraged to submit applications in advance of the Application Deadline, applications will not be evaluated, and awards will not be made, until after the Application Deadline. Pursuant to the FY 2010 Appropriations Act, DOT will evaluate

all applications and announce the projects that have been selected to receive TIGER II Discretionary Grants no sooner than September 15, 2010.

ADDRESSES: Pre-applications must be submitted electronically to DOT and applications must be submitted electronically through Grants.gov. Only pre-applications received by DOT and applications received through Grants.gov will be deemed properly filed. Instructions for submitting pre-applications to DOT and applications through Grants.gov are included in Section VIII (*Pre-Application and Application Cycle*).

FOR FURTHER INFORMATION: For further information concerning this notice please contact the TIGER II Discretionary Grant program manager via e-mail at TIGERIIGrants@dot.gov, or call Robert Mariner at 202-366-8914. A TDD is available for individuals who are deaf or hard of hearing at 202-366-3993. In addition, DOT will regularly post answers to questions and requests for clarifications on DOT's website at www.dot.gov/recovery/ost/TIGERII.

SUPPLEMENTARY INFORMATION: On April 26, 2010, DOT published an interim notice announcing funding availability for the TIGER II Discretionary Grant program. Because this is a new program, the interim notice also requested comments on the proposed selection criteria and guidance for awarding TIGER II Discretionary Grants. DOT considered the comments that were submitted in accordance with the interim notice and decided to publish this notice revising some elements of the interim notice. Each of the substantive revisions made in this notice are described in the following numbered paragraphs.

This notice revises the interim notice published on April 26, 2010, as follows:

1. The notice is no longer an interim notice, and DOT is no longer considering comments on the proposed selection criteria and guidance for awarding TIGER II

Discretionary Grants. This notice is the operative notice of funding availability for the TIGER II Discretionary Grant program.

2. In the interim notice, DOT indicated that it was seeking comments on its intention to conduct a multi-agency evaluation and award process with the Department of Housing and Urban Development ("HUD") for DOT's TIGER II Planning Grants (as defined below in the "Background" section) and HUD's Community Challenge Planning Grants, which were also authorized under the FY 2010 Appropriations Act. DOT and HUD have considered the comments that were submitted and have agreed to conduct a multi-agency evaluation and award process for their respective planning grants. This approach is consistent with DOT and HUD's participation in the "Partnership for Sustainable Communities" with the U.S. Environmental Protection Agency ("EPA") to help American families in all communities – rural, suburban and urban – gain better access to affordable housing, more transportation options, lower transportation costs, and a cleaner environment. The details of this multi-agency planning grant program, including information about eligibility, selection criteria, and pre-application and application requirements, are described in a joint notice of funding availability to be published in the Federal Register by DOT and HUD. The joint notice will be published shortly after this notice and signed by the Secretaries of each agency. Interested parties are encouraged to review the joint notice for more information. However, DOT applicants may request funding for planning and capital expenses for the same project under this notice.
3. This notice provides additional guidance in the "Background" section about the matching funds required to satisfy the FY 2010 Appropriations Act. DOT will

consider any non-Federal funds as a local match for purposes of this program, whether such funds are contributed by the public sector (State or local) or the private sector. However, DOT will not consider funds already expended as a local match. Furthermore, the 20 percent matching requirement for project that are not in rural areas is an eligibility requirement. All projects, whether in an urban or rural area, can increase their competitiveness by demonstrating significant contributions in excess of the required local match, and DOT will give priority, based on the FY 2010 Appropriations Act, to projects for which Federal funding is required to complete an overall financing package.

4. This notice clarifies the definition of "rural area" that DOT is using for purposes of the TIGER II Discretionary Grant program. The interim notice stated that DOT will consider a project to be in a rural area if "all or a material portion of a project is located in a rural area". This notice clarifies that DOT will only consider a material portion of a project to be located in a rural area if the majority of the project is located in a rural area. The reason this language was included in the notice was to ensure that rural transportation corridors could be considered to be in rural areas even if the corridors terminate in, or otherwise pass through, Urbanized Areas (as such term is defined by the Census Bureau). To the extent more than a *de minimis* portion of a project is located in an Urbanized Area, this notice asks applicants to identify the estimated percentage of project costs that will be spent in the Urbanized Area. This will allow DOT to appropriately account for the \$140 million that the FY 2010 Appropriations Act sets aside for rural areas. Also, this notice revises the footnote in Section V (*Projects in Rural*

Areas) to clarify that rural areas include any area not in an Urbanized Area, as such term is defined by the Census Bureau, including Urban Clusters.

5. This notice revises Section II(B)(1)(b)(ii) (*Environmental Approvals*) to provide additional guidance about the assurance that applicants should provide with their pre-applications to demonstrate that the project has received (or reasonably anticipates receipt of) all necessary environmental approvals required for the project to proceed rapidly upon receipt of a TIGER II Discretionary Grant.
6. This notice revises the Economic Competitiveness criterion described in Section II(B)(1)(a)(ii) and the guidance for conducting a benefit-cost analysis provided in Appendix A to further clarify what the Department considers to be long-term economic benefits.

This notice revises Section VI (*TIGER II TIFIA Payments*) to clarify that the correct amount of the TIFIA application fee is \$50,000, not \$30,000. Applicants do not need to submit this fee with their application for a TIGER II TIFIA Payment. However, if a project is selected for a TIGER II TIFIA Payment, the project sponsor will be invited to submit a TIFIA application, and will be required to pay the TIFIA application fee with submission of the TIFIA application. These substantive changes to the interim notice published on April 26, 2010, have been included in this notice. All comments received prior to the May 7, 2010, deadline were received and considered by DOT.

I. Background

Recovery Act TIGER Discretionary Grants

On February 17, 2009, the President of the United States signed the Recovery Act, which appropriated \$1.5 billion of discretionary grant funds to be awarded by DOT for capital investments in surface transportation infrastructure. DOT refers to these grants as Grants for Transportation Investment Generating Economic Recovery or "TIGER Discretionary Grants". DOT solicited applications for TIGER Discretionary Grants through a notice of funding availability published in the Federal Register on June 17, 2009 (an interim notice was published on May 18, 2009). Applications for TIGER Discretionary Grants were due on September 15, 2009 and DOT received over 1400 applications with funding requests totaling almost \$60 billion. Funding for 51 projects totaling nearly \$1.5 billion was announced on February 17, 2010. Grant announcements ranged from \$3.15 million to \$105 million for individual projects, with an average award size of approximately \$30 million and the median award amount being \$22 million. Less than three percent of the applications (by dollar value) received any funding. Projects were selected for funding based on their alignment with the selection criteria specified in the June 17, 2009, Federal Register notice for the TIGER Discretionary Grant program.

On December 16, 2009, the President signed the FY 2010 Appropriations Act, which appropriated \$600 million to DOT for National Infrastructure Investments using language

that is similar, but not identical, to the language in the Recovery Act authorizing the TIGER Discretionary Grants. DOT is referring to the grants for National Infrastructure Investments as TIGER II Discretionary Grants.

TIGER II Discretionary Grants

Like the TIGER Discretionary Grants, TIGER II Discretionary Grants are for capital investments in surface transportation infrastructure and are to be awarded on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area, or a region. Key requirements of the TIGER II Discretionary Grant program are summarized below, and material differences from the TIGER Discretionary Grant program are highlighted.

“Eligible Applicants” for TIGER II Discretionary Grants are State and local governments, including U.S. territories, tribal governments, transit agencies, port authorities, metropolitan planning organizations (MPOs), other political subdivisions of State or local governments, and multi-State or multi-jurisdictional groups applying through a single lead applicant (for multi-jurisdictional groups, each member of the group, including the lead applicant, must be an otherwise eligible applicant as defined in this paragraph).

Projects that are eligible for TIGER II Discretionary Grants under the FY 2010 Appropriations Act (“Eligible Projects”) include, but are not limited to: (1) highway or bridge projects eligible under title 23, United States Code; (2) public transportation projects eligible under chapter 53 of title 49, United States Code; (3) passenger and freight rail transportation projects; and (4) port infrastructure investments. Federal wage rate requirements included in subchapter IV of chapter 31 of title 40, United States Code, apply to all projects receiving funds. This description of Eligible Projects is, in practice,

identical to the description of eligible projects under the TIGER Discretionary Grant program.¹

The FY 2010 Appropriations Act requires a new solicitation of applications and, therefore, any unsuccessful applicant for a TIGER Discretionary Grant that wishes to be considered for a TIGER II Discretionary Grant must reapply according to the procedures in this notice.

The FY 2010 Appropriations Act specifies that TIGER II Discretionary Grants may be not less than \$10 million and not greater than \$200 million. The comparable figures for TIGER Discretionary Grants funded under the Recovery Act were \$20 million and \$300 million, although the largest grant announced under the TIGER program was \$105 million. Based on DOT's experience with the TIGER Discretionary Grant program, it is unlikely that the \$200 million maximum grant size for the TIGER II Discretionary Grant program will be reached for any project. The Recovery Act gave DOT discretion to waive the minimum grant size for significant projects in smaller cities, regions, or States. The FY 2010 Appropriations Act does not provide similar authority to waive the minimum \$10 million grant size for TIGER II Discretionary Grants. However, for projects located in rural areas (as defined in section V (*Projects in Rural Areas*)), the minimum TIGER II Discretionary Grant size is \$1 million. The term "grant" in the provision of the FY 2010 Appropriations Act specifying a minimum grant size does not include TIGER II TIFIA Payments, as defined below.

¹ Consistent with the FY 2010 Appropriations Act, DOT will apply the following principles in determining whether a project is eligible as a capital investment in surface transportation: (1) surface transportation facilities generally include roads, highways and bridges, ports, freight and passenger railroads, transit systems, and projects that connect transportation facilities to other modes of transportation; and (2) surface transportation facilities also include any highway or bridge project eligible under title 23, U.S.C., or public transportation project eligible under chapter 53 of title 49, U.S.C. Please note that the Department may use a TIGER II Discretionary Grant to pay for the surface transportation components of a broader project that has non-surface transportation components, and applicants are encouraged to apply for TIGER II Discretionary Grants to pay for the surface transportation components of these projects.

financing package applies to project located in rural areas as well, and projects located in rural areas can increase their competitiveness for purposes of the TIGER II program by demonstrating significant non-Federal financial contributions.

The Recovery Act required DOT to give priority to projects that were expected to be completed by February 17, 2012. The FY 2010 Appropriations Act does not include any similar requirements for the TIGER II Discretionary Grants, although TIGER II funds are only available for obligation through September 30, 2012.

The Recovery Act emphasizes the generation of near-term economic effects from expenditures on project costs, such as construction job creation, as a fundamental goal of the TIGER Discretionary Grant program. However, the FY 2010 Appropriations Act does not include explicit emphasis on job creation and instead focuses more broadly on the impact of projects on the Nation, a metropolitan area, or a region including the medium and long-term benefits that would accrue post-project completion. Therefore, in all cases, TIGER II Discretionary Grant applications will need to be competitive on the merits of the medium to long-term impacts of the projects themselves, as demonstrated by a project's alignment with the Long-Term Outcomes selection criterion described in Section II(A) (*Selection Criteria*) below. However, because communities nationwide continue to face difficult economic times, DOT will also continue to incorporate near-term impacts like job creation in its evaluation of TIGER II applications, as demonstrated by a project's alignment with the Job Creation & Economic Stimulus selection criterion described in Section II(A) below. Consideration of near-term benefits will apply particularly in the case of projects that will employ people in Economically Distressed Areas as discussed in more detail in Section II(A) below.

The FY 2010 Appropriations Act allows for an amount not to exceed \$150 million of the \$600 million to be used to pay the subsidy and administrative costs of the Transportation Infrastructure Finance and Innovation Act of 1998 ("TIFIA") program, a Federal credit assistance program, if it would further the purposes of the TIGER II Discretionary Grant program. DOT is referring to these payments as "TIGER II TIFIA Payments." The Recovery Act authorized DOT to use up to \$200 million of the amount available for TIGER Discretionary Grants for similar purposes.

Based on the subsidy amounts required for projects in the TIFIA program's existing portfolio, DOT estimates that \$150 million of TIGER II TIFIA Payments could support approximately \$1.5 billion in TIFIA credit assistance. The amount of budget authority required to support TIFIA credit assistance is calculated on a project-by-project basis. Applicants for TIGER II TIFIA Payments should submit an application pursuant to this notice and a separate TIFIA letter of interest, as described below in Section VI (*TIGER II TIFIA Payments*). Unless otherwise noted, or the context requires otherwise, references in this notice to TIGER II Discretionary Grants include TIGER II TIFIA Payments.

DOT reserves the right to offer a TIGER II TIFIA Payment to an applicant that applied for a TIGER II Discretionary Grant even if DOT does not choose to fund the requested TIGER II Discretionary Grant and the applicant did not specifically request a TIGER II TIFIA Payment. Therefore, as described below in Section VI (*TIGER II TIFIA Payments*), applicants for TIGER II Discretionary Grants, particularly applicants that require a substantial amount of funds to complete a financing package, should indicate whether or not they have considered applying for a TIGER II TIFIA Payment. To the extent an applicant thinks that TIFIA may be a viable option for the project, applicants should provide a brief description of a project finance plan that includes TIFIA credit

assistance and identifies a source of revenue which may be available to support the TIFIA credit assistance.

The FY 2010 Appropriations Act also permits DOT to use an amount not to exceed \$35 million of the available TIGER II funds for the planning, preparation, or design of Eligible Projects ("TIGER II Planning Grants"). TIGER II Planning Grants may be awarded to Eligible Applicants. The Recovery Act did not explicitly provide funding for similar activities under the TIGER Discretionary Grant program.

The FY 2010 Appropriations Act provides that the Secretary of Transportation may retain up to \$25 million of the \$600 million to fund the award and oversight of TIGER II Discretionary Grants. Portions of the \$25 million may be transferred for these purposes to the Administrators of the Federal Highway Administration, the Federal Transit Administration, The Federal Railroad Administration, and the Federal Maritime Administration.

The purpose of this notice is to solicit applications for TIGER II Discretionary Grants.